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April 14, 2009

Catrice C. Williams, Secretary  
Department of Telecommunications & Cable  
Commonwealth of Massachusetts  
Two South Station  
Boston, Massachusetts 02110

**Re: DTC 08-9– Petition of Intrado Communications Inc. for Arbitration  
Pursuant to Section 252(b) of the Communications Act of 1934**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding is Verizon Massachusetts's Notice of Recent Decision.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Moore".

Alexander W. Moore

cc: Service List

**BEFORE THE  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

<b>In the Matter of the Petition of Intrado</b>	)	
<b>Communications Inc. for Arbitration</b>	)	
<b>Pursuant to Section 252(b) of the</b>	)	<b>DTC 08-9</b>
<b>Communications Act of 1934, as Amended</b>	)	
<b>To Establish an Interconnection</b>	)	
<b>Agreement with Verizon New England</b>	)	
<b>Inc. d/b/a Verizon Massachusetts.</b>	)	

**NOTICE OF RECENT DECISION**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon”) respectfully submits this Notice of Recent Decision regarding the Hearing Examiner’s Scheduling Notice, dated April 8, 2009, in *The Matter of The Petition of Intrado Communications, Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Maryland Inc. Pursuant to the Federal Telecommunications Act*, (Case No. 9138, Md. P.S.C.) (“Scheduling Notice”) (attached hereto as Exhibit 1).

This decision is relevant to the Department’s determination of Verizon’s Motion for Abeyance, filed March 10, 2009. In that Motion, Verizon requested that the Department hold this arbitration in abeyance pending a ruling in the Intrado/Verizon Virginia arbitration now before the FCC’s Wireline Competition Bureau (“Bureau”).<sup>1</sup> As described in that Motion and in Verizon’s Initial Brief in this case, the issues in the Bureau arbitration are nearly identical to the issues in

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<sup>1</sup> *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, WC Docket No. 08-33; *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, WC Docket No. 08-185 (consolidated by Order released Dec. 9, 2008, FCC No. DA 08-2682).

this case, and the Bureau intends to first decide the threshold issue of whether Intrado is even entitled to section 251(c) interconnection with Verizon (and Embarq).

In the attached Scheduling Notice, the Hearing Examiner in a parallel proceeding before the Maryland Public Service Commission recently determined that “eligibility for Section 251(c) arbitration is perhaps the most significant issue in this case” and that the Hearing Examiner would accordingly “refrain from issuing any Proposed Order in this matter until the relevant FCC order is issued” and can be reviewed. Scheduling Notice at 1.

The list of issues presented for resolution in Verizon’s arbitration with Intrado in Maryland is in all material respects the same as the list of issues presented here (as well as in the list of issues in the parties’ arbitration at the FCC.) The fact that these lists do not present as an arbitration issue the question of Intrado’s entitlement to section 251(c) interconnection does not mean that this fundamental jurisdictional issue does not exist. Obviously, the Department cannot act in any case unless it has jurisdiction to do so. Here, the Department cannot impose on incumbent local exchange carriers requirements that are inconsistent with sections 251 and 252 of the Act and the FCC’s rules implementing those provisions. Subject matter jurisdiction, which is the agency’s power to hear and determine causes of the general class of cases to which the particular case belongs, cannot be waived by either party and may be raised by the tribunal at any stage in the proceedings.<sup>2</sup>

Intrado and Verizon recently stipulated to an extension of the dates in this arbitration, under which no decision is due from the Arbitrator until May 8, 2009. The Bureau’s target date for a decision is May 2, but if that date should slip, Verizon respectfully submits that the

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<sup>2</sup> See, e.g., *MacDougall v. Acres*, 427 Mass. 363, 371 (Mass. 1998) (“It is well-settled law that subject matter jurisdiction cannot be conferred by consent, conduct or waiver”) (citing *Litton Business Sys., Inc. v. Commissioner of Revenue*, 383 Mass. 619, 622, 420 N.E.2d 339 (1981); see also *Williams v. Attleboro Mutual Fire Ins. Co.*, 31 Mass. App. Ct. 521 (1991), citing *Patry v. Liberty Mobilhome Sales, Inc.*, 15 Mass. App. Ct. 701 (1983) (even where parties are silent on issue, courts must consider issue of subject matter jurisdiction sua sponte).

Department should join the Maryland Commission and refrain from issuing its ruling in this matter until the Bureau issues its decision, because that decision may provide useful guidance on the jurisdictional question of Intrado's right to request arbitration pursuant to Section 252 as well as the specific issues in this matter.

Respectfully submitted,

VERIZON NEW ENGLAND INC. d/b/a  
VERIZON MASSACHUSETTS

By its Attorneys,

A handwritten signature in black ink, appearing to read "Alex Moore", is written over a horizontal line.

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Dated: April 14, 2009

IN THE MATTER OF THE PETITION OF \*  
INTRADO COMMUNICATIONS INC. FOR \*  
ARBITRATION TO ESTABLISH AN \*  
INTERCONNECTION AGREEMENT WITH \*  
VERIZON MARYLAND INC. PURSUANT TO \*  
THE FEDERAL TELECOMMUNICATIONS ACT \*

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

\_\_\_\_\_  
CASE NO. 9138  
\_\_\_\_\_

\_\_\_\_\_  
April 8, 2009

**HEARING EXMINER'S SCHEDULING NOTICE**

At page 3 of its Reply Brief in the above-entitled matter, Verizon states that the Federal Communication Commission ("FCC's) Wireline Competition Bureau "intends to resolve by early May the threshold issue of Intrado's entitlement to Section 251(c) [of the Communications Act] interconnection ... waiting for the Bureau's guidance would, likewise, be the most sensible and efficient course here."

This Hearing Examiner agrees with Verizon, as eligibility for Section 251(c) arbitration is perhaps the most significant issue in this case, and I will therefore refrain from issuing any Proposed Order in this matter until the relevant FCC order is issued and case be reviewed. The parties shall notify the Hearing Examiner as soon as such an order is issued, and expeditiously provide him with a copy.

\_\_\_\_\_  
Robert H. McGowan  
Hearing Examiner  
Public Service Commission of Maryland

April 8, 2009

In the matter of the petition of \*  
Intrado Communications Inc. for Case No. 9138  
arbitration to establish an \*  
interconnection agreement with \*  
Verizon Maryland Inc. Pursuant to \*  
the federal telecommunications act

To All Parties of Record:

Enclosed please find a copy of the "Hearing Examiner's  
Scheduling Notice" issued today in the above-entitled matter.

Very truly yours,

Kathleen Berends  
Management Associate

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Enclosure